

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DARREN SMITH,

Plaintiff,

v.

CITY OF QUINCY; WILLIAM  
GONZALES; and SCOTT JONES,

Defendants.

NO: CV-09-328-RMP

ORDER ON DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT

Before the Court is Defendants' Motion for Summary Judgment (Ct. Rec. 24). Defendants request that the Court dismiss Plaintiff Darren Smith's claim for violation of civil rights under 42 U.S.C. § 1983, as well as his claim of termination in violation of public policy. Defendants request that the remaining state claims be remanded to state court.

Plaintiff is a former Quincy police officer complaining of (1) wrongful termination in violation of public policy, (2) breach of promise of specific treatment in specific circumstances, (3) defamation, and (4) violation of civil rights in violation of 42 U.S.C. § 1983 (Ct. Rec. 1). Under § 1983, Plaintiff claims that

ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ~ 1

1 he was deprived of his right to free speech under the First Amendment because  
2 Defendants retaliated against him for his statements connected with union activity,  
3 tried to force him to alter a “use of force” form, retaliated for his statements  
4 regarding safety issues and his public information requests (Ct. Rec. 1 at 7).  
5 Plaintiff also claims that he was deprived of his liberty interest and/or property  
6 interest without due process as afforded by the fourteenth amendment (Ct. Rec. 1  
7 at 7).  
8

9  
10 This Court has jurisdiction pursuant to 28 U.S.C § 1331 and can exercise  
11 supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C.  
12 §1367.  
13  
14

## 15 **Background**

### 16 **A. Union Activity**

17  
18 Officer Smith was hired by the Quincy police department as a provisional  
19 officer on February 9, 2007 (Ct. Rec. 25 at 1). On March 15, 2007, he became a  
20 patrolman with the department (Ct. Rec. 25 at 2). In the fall of 2007, Officer  
21 Smith began having conflict with his departmental supervisor, Sergeant Scott  
22 Jones. On approximately October 19, 2007, at a private union meeting, Officer  
23 Smith and other officers questioned the transparency of the selection process for  
24 the next sergeant (Ct. Rec. 57-2 at 36). Officer Smith alleges that Sgt. Jones  
25  
26  
27  
28

1 “raised his voice and became a bit argumentative” in response to the officers’  
2 position on certain issues (Ct. Rec. 57-2 at 36).

### 3 4 5 **B. Use of Force Form**

6 One of the underlying events at issue is an allegation that Sgt. Jones  
7 retaliated against Officer Smith for an erroneous completion of a “use of force  
8 form.” The use of force event occurred on September 30, 2007, and Officer Smith  
9 filed the report on October 1, 2007 (Ct. Rec. 57-1 at 20). On October 20, 2007,  
10 after reviewing Officer Smith’s use of force report regarding this incident, Sgt.  
11 Jones emailed the Taser instructor of the department, Officer Dan Dopps, who had  
12 signed off on the report (Ct. Rec. 57-1 at 28).

13  
14  
15  
16 Officer Smith alleges that the retaliation began when Sgt. Jones noted that  
17 Officer Dopps’ report stated that he had reviewed some training issues with Officer  
18 Smith and asked Officer Dopps for a brief memo outlining what was discussed  
19 with Officer Smith (Ct. Rec. 57-1 at 28). On October 30, 2007, Sgt. Jones sent  
20 another email to Officer Dopps regarding an omission in the use of force report.  
21 Sgt. Jones noted that Officer Smith had failed to check a box on the form and  
22 requested that Officer Smith check the box under the heading of “suspect actions”  
23 (Ct. Rec. 57-2 at 32). Instead, Officer Smith created his own box and wrote in  
24 “non compliance [*sic*] with orders” next to it (Ct. Rec. 57-2 at 32).  
25  
26  
27  
28

1 While stating that the issue was not major, Sgt. Jones then asked Officer  
2 Dopps via email to review with Officer Smith how to properly complete the form  
3 including actually checking the appropriate box (Ct. Rec. 57-2 at 32). Sgt. Jones  
4 copied Officer Smith on his email. Officer Smith responded via email shortly  
5 afterward stating that he needed no further education on how to fill out the use of  
6 force form and accusing Sgt. Jones of asking him to change material facts in a  
7 report and perjure himself (Ct. Rec. 57-2 at 32).  
8

9  
10 Within minutes several in person comments were exchanged between Sgt.  
11 Jones and Officer Smith Ct. Rec. 57-2 at 36). Sgt. Jones allegedly questioned  
12 whether Officer Smith really enjoyed working for the department (Ct. Rec. 57-2 at  
13 36). Officer Smith stated that he did enjoy working for the department but that he  
14 objected to Sgt. Jones' tone and then Officer Smith announced that "this  
15 conversation is over" (Ct. Rec. 57-2 at 36).  
16  
17

### 18 **C. Safety Complaints and Suggestions**

19  
20 Another conflict between Sgt. Jones and Officer Smith occurred when Sgt.  
21 Jones issued a directive to remove shotguns from patrol cars at the end of shifts  
22 (Ct. Rec. 57-1 at 23). Officer Smith filed an objection to the new directive (Ct.  
23 Rec. 57-1 at 25). Officer Smith alleges that in December, 2007, a fellow  
24 department employee invited Officer Smith also to submit safety concerns and  
25 suggestions to the Safety Committee for the City of Quincy, a committee that  
26  
27  
28

1 included a police department representative and which reported back to Chief  
2 Gonzalez (Ct. Rec. 57 at 6). Officer Smith submitted a series of complaints and  
3 suggestions to the Safety Committee:  
4

- 5 • On December 27, 2007, he requested snow tires for all patrol vehicles (Ct.  
6 Rec. 57-2 at 39);  
7
- 8 • On December 29, 2007, he complained about removing shotguns from patrol  
9 cars at the end of shifts (Ct. Rec. 57-2 at 44);  
10
- 11 • On January 3, 2008, he complained about unsecured doors and windows in  
12 the department (Ct. Rec. 27 at 20);  
13
- 14 • On January 6, 2008, he requested a secure and fenced parking area for the  
15 patrol vehicles (Ct. Rec. 57-3 at 56); and  
16
- 17 • On January 8, 2008, he expressed his concern about the police department's  
18 reckless press releases (Ct. Rec. 57 at 7).

19 Some of Officer Smith's suggestions were accepted by the Safety  
20 Committee and others were rejected (Ct. Rec. 57-3 at 60-69). On January 11,  
21 2008, Officer Dopps sent an email to the department expressing that Chief William  
22 Gonzales felt blindsided by "person(s) outside the department on issues that should  
23 have been addressed first by the Chief" and requesting department members to  
24 bring their concerns or issues through the chain of command before going outside  
25 the department (Ct. Rec. 57-3 at 71).  
26  
27  
28

1  
2  
3 **D. Claims of Unprofessionalism and Resignation**

4 Conflict occurred again on March 6, 2008, when Officer Smith sent an email  
5 to Officer Dopps and Sgt. Jones expressing concern about a blown tire on a patrol  
6 car (Ct. Rec. 57-4 at 74). Sgt. Jones and Officer Smith then exchanged emails in  
7  
8 which they accused each other of being unprofessional (Ct. Rec. 57-4 at 73).

9 As a result of the March 2008 conflict, Sgt. Jones scheduled a meeting with  
10  
11 Officer Smith to discuss and resolve issues (Ct. Rec. 57-4 at 76). Sgt. Jones stated  
12 that the meeting was not disciplinary, but was meant to avoid discipline (Ct. Rec.  
13 57-4 at 76). Sgt. Jones expressed a desire to try to depolarize their relationship and  
14  
15 discuss issues in an informal low-key environment (Ct. Rec. 57-4 at 76). Sgt.  
16 Jones also referenced what appears to be the Quincy Police Department's Standard  
17  
18 Operating Procedures manual that requires employee concerns to be brought first  
19 internally before seeking higher review (Ct. Rec. 57-4 at 78). On the day of the  
20  
21 meeting, Officer Smith brought a union member with him to the meeting and  
22 alleges that Sgt. Jones became hostile and terminated the meeting (Ct. Rec. 57 at  
23 10).

24  
25 On March 17, 2008, Officer Smith submitted a letter of resignation stating  
26 that "the working environment resident within the department has become  
27  
28 something that I can no longer accept" (Ct. Rec. 57-4 at 80). Sometime after this

1 date, Officer Smith met with the mayor of Quincy. On April 4, 2008, he sent the  
2 mayor a letter stating that he would rescind his letter of resignation under the  
3 conditions that (1) Sgt. Jones cease retaliatory action against him, and (2) the city  
4 adopt, in substantial form, a whistleblower policy provided by Officer Smith (Ct.  
5 Rec. 57-4 at 82). Rather than allowing Officer Smith to rescind, the city accepted  
6 his resignation (Ct. Rec. 26 at 2).  
7

### 8 **E. Post Resignation**

9  
10 More than a half of a year after leaving his employment at the City of  
11 Quincy and while employed as an officer of the Grant County Sheriff's Office,  
12 Officer Smith personally served the City of Quincy with public records requests  
13 relating to his previously filed safety concerns (Ct. Rec. 57 at 10). That same day,  
14 Chief Gonzales issued a memo to all personnel stating that he felt that Darren  
15 Smith's "presence causes an uncomfortable environment and a safety issue for my  
16 personnel" and directing that "he is to go no further than the information window  
17 of our office and not behind any locked doors" (Ct. Rec. 57-4 at 85).  
18  
19  
20  
21

### 22 **Applicable Law**

23  
24 Summary judgment is appropriate "if the pleadings, depositions, answers to  
25 interrogatories, and admissions on file, together with the affidavits, if any, show  
26 that there is no genuine issue as to any material fact and that the moving party is  
27 entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A key purpose of  
28

1 summary judgment “is to isolate and dispose of factually unsupported claims . . . .”  
2 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). Summary judgment is “not  
3 a disfavored procedural shortcut,” but is instead the “principal tool[ ] by which  
4 factually insufficient claims or defenses [can] be isolated and prevented from going  
5 to trial with the attendant unwarranted consumption of public and private  
6 resources.” *Celotex*, 477 U.S. at 327.  
7

8  
9 The moving party bears the initial burden of demonstrating the absence of a  
10 genuine issue of material fact. *See Celotex*, 477 U.S. at 323. The moving party  
11 must demonstrate to the Court that there is an absence of evidence to support the  
12 non-moving party's case. *See Celotex Corp.*, 477 U.S. at 325. The burden then  
13 shifts to the non-moving party to “set out ‘specific facts showing a genuine issue  
14 for trial.’” *Celotex Corp.*, 477 U.S. at 324 (quoting Fed. R. Civ. P. 56(e)).  
15  
16

17  
18 A genuine issue of material fact exists if sufficient evidence supports the  
19 claimed factual dispute requiring “a jury or judge to resolve the parties' differing  
20 versions of the truth at trial.” *T.W. Elec. Service, Inc. v. Pacific Elec. Contractors*  
21 *Ass'n*, 809 F.2d 626, 630 (9th Cir.1987). At summary judgment, the court draws  
22 all reasonable inferences in favor of the nonmoving party. If the nonmoving party  
23 produces evidence that contradicts evidence produced by the moving party, the  
24 court must assume the truth of the nonmoving party's evidence with respect to that  
25 fact. *T.W. Elec. Service, Inc.*, 809 F.2d at 631. The evidence presented by both the  
26  
27  
28



1 moving and non-moving parties must be admissible. Fed. R. Civ. P. 56(e).  
2 Furthermore, the court will not presume missing facts and non-specific facts in  
3 affidavits are not sufficient to support or undermine a claim. *Lujan v. Nat'l*  
4 *Wildlife Fed'n*, 497 U.S. 871, 888-89, 110 S.Ct. 3177, 111 L.Ed.2d 695 (1990).  
5

## 6 **Discussion**

### 7 **1. First Amendment Claim**

8  
9 Officer Smith claims that his civil rights were violated when Defendants  
10 deprived him of his right to free speech. Specifically, Officer Smith claims that he  
11 was retaliated against for questioning the transparency of the selection process for  
12 the next sergeant, his completion of the use of force form, his reporting of safety  
13 issues, and his public information requests (Ct. Rec. 57-2 at 36; Ct. Rec. 54 at 2).  
14  
15

16 The parties agree on the applicable law and both cite *Eng v. Cooley*, 552  
17 F.3d 1062 (9th Cir.2009), as support. *Cooley* states:  
18

19 It is well settled that the state may not abuse its position as employer  
20 to stifle “the First Amendment rights its employees would otherwise  
21 enjoy as citizens to comment on matters of public interest.” *Pickering*  
22 *v. Bd. of Educ.*, 391 U.S. 563, 568, 88 S.Ct. 1731, 20 L.Ed.2d 811  
23 (1968). Acknowledging the limits on the state's ability to silence its  
24 employees, the Supreme Court has explained that “the problem in any  
25 case is to arrive at a balance between the interests of the public  
26 employee, as a citizen, in commenting upon matters of public concern  
27 and the interest of the State, as an employer, in promoting the  
28 efficiency of the public services it performs through its employees.”  
*Id.*

1 In the forty years since *Pickering*, First Amendment retaliation law  
2 has evolved dramatically, if sometimes inconsistently. Unraveling  
3 *Pickering's* tangled history reveals a sequential five-step series of  
4 questions: (1) whether the plaintiff spoke on a matter of public  
5 concern; (2) whether the plaintiff spoke as a private citizen or public  
6 employee; (3) whether the plaintiff's protected speech was a  
7 substantial or motivating factor in the adverse employment action; (4)  
8 whether the state had an adequate justification for treating the  
employee differently from other members of the general public; and  
(5) whether the state would have taken the adverse employment action  
even absent the protected speech.

9 *Eng v. Cooley*, 552 F.3d 1062, 1070 (9th Cir.2009).

10  
11 **a. Whether Speech Is a Matter of Public Concern**

12 Speech involves a matter of public concern when it can fairly be considered  
13 to relate to any matter of political, social, or other concern to the community.

14  
15 *Johnson v. Multnomah County, Or.*, 48 F.3d 420, 422 (9th Cir.1995) (quoting  
16 *Connick v. Myers*, 461 U.S. 138, 147 (1983)). However, “speech that deals with  
17 individual personnel disputes and grievances and that would be of no relevance to  
18 the public's evaluation of the performance of governmental agencies is generally  
19 not of public concern.” *Coszalter v. City of Salem*, 320 F.3d 968, 973 (9th  
20 Cir.2003). “Whether an employee's speech addresses a matter of public concern  
21 must be determined by the content, form, and context of a given statement, as  
22 revealed by the whole record.” *Johnson*, 48 F.3d at 422.

23  
24  
25  
26 The Plaintiff has the burden of showing that the speech addressed an issue of  
27 public concern. *Eng v. Cooley*, 552 F.3d 1062 (9th Cir.2009). The Ninth Circuit  
28

1 has defined the scope of public concern broadly and adapted a liberal construction  
2 of what an issue of public concern is under the First Amendment. *Desrochers v.*  
3 *City of San Bernardino*, 572 F.3d 703, 710 (9th Cir. 2009). Still, speech  
4 concerning government inefficiency does not automatically receive First  
5 Amendment protection; rather the focus must be whether the public or community  
6 is likely to be truly interested in the particular speech. *Id.* at 713.  
7

8  
9 Defendants classify all of Smith's complaints as related to his working  
10 conditions: Sgt. Jones' allegedly raising his voice at Officer Smith when he  
11 questioned the fairness of the selection of the next sergeant; Sgt. Jones'  
12 questioning of Officer Smith's completion of the use of force form; Officer  
13 Smith's filing of safety suggestions and complaints; and Officer Smith's objections  
14 regarding safety issues (Ct. Rec. 26 at 7).  
15  
16

17  
18 Officer Smith argues that the selection of the next sergeant and the safety  
19 issues were matters of public concern. Officer Smith emphasizes that the safety  
20 issues were directed to the Safety committee that was compromised of  
21 representatives of department employees and city employees, and therefore the  
22 Court should consider the safety issues, at a minimum, to be speech of public  
23 concern.  
24  
25

26 The Court finds that the majority of Plaintiff's complaints appear to be the  
27 result of personality conflicts and possibly an internal power struggle between  
28

1 Officer Smith and Sgt. Jones. However, arguably some of Smith's issues could be  
2 deemed as matters of public concern: most notably, Officer Smith's complaint  
3 regarding the removal of shotguns from patrol cars and the inadequate storage  
4 facilities (Ct. Rec. 27 at 9). This could be construed as a matter of public concern  
5 because it could present a potential danger to the officers and a potentially slower  
6 officer response time to an emergency. In support of this position, it is significant  
7 that the Safety committee adopted some of Smith's suggestions (Ct. Rec. 27 at 12).  
8  
9

10 Therefore, viewing the evidence in the light most favorable to the Plaintiff, it  
11 appears that at least Officer Smith's speech regarding safety issues could be  
12 construed as addressing issues of public concern.  
13  
14

15 **b. Whether The Plaintiff Spoke As a Private Citizen or Public**  
16 **Employee**

17 Second, the Plaintiff bears the burden of showing that the speech was spoken  
18 in the capacity of a private citizen and not a public employee. *Eng v. Cooley*, 552  
19 F.3d 1062, 1071 (9th Cir. 2009).  
20

21 Speech which owes its existence to an employee's professional  
22 responsibilities is not protected by the First Amendment.  
23 Additionally, if the public employee was paid for the speech--e.g.,  
24 drafting a memorandum, creating a report, advising a supervisor--then  
25 that compensation might be indicative of the nature of the speech. An  
26 adverse employment action for this type of speech does not infringe  
27 any liberties the employee might have enjoyed as a private citizen. It  
28 simply reflects the exercise of employer control over what the  
employer itself has commissioned or created.

*Huppert v. City of Pittsburg*, 574 F.3d 696, 704 (9th Cir. 2009).

1 A court must take a “practical look” beyond the job descriptions to the duties  
2 that the employee actually performs. *Id.* at 704. “Speech which has no official  
3 significance and bears similarities to actions taken by numerous citizens everyday  
4 falls outside the ambit of an employee’s job duties and would be protected by the  
5 First Amendment.” *Id.* at 704.  
6

7  
8 In a close case, when the subject matter of a statement is only  
9 marginally related to issues of public concern, the fact that it  
10 was made because of a grudge or other private interest or to co-  
11 workers rather than to the press may lead the court to conclude  
12 that the statement does not substantially involve a matter of  
13 public concern.

14 *Johnson v. Multnomah County, Or.*, 48 F.3d 420, 425 (9th Cir. 1995).

15 An “employee’s motivation and the chosen audience are among the many  
16 factors to be considered” by the court. *Id.* Although not dispositive, a limited  
17 audience weighs against the claim of protected speech. *Roe v. City and County of*  
18 *San Francisco*, 109 F.3d 578, 585 (9th Cir. 1997).  
19

20 Defendants contend that Officer Smith’s speech was that of a public  
21 employee: internal employee grievances and workplace suggestions. In addition,  
22 Defendants note that Smith’s limited audience and the fact that the public was  
23 never made aware of Smith’s concerns supports the conclusion that Smith’s speech  
24 was made in his role as a public employee.  
25  
26

27 Officer Smith relies on a California state court definition of an officer’s  
28 duties to support that his speech was outside his official duties of a police officer.

1 *Huppert v. City of Pittsburg*, 574 F.3d 696, 705 (9th Cir. 2009). Officer Smith also  
2 relies on *Huppert* to argue that making complaints and suggestions to the Safety  
3 committee falls outside of the “chain of command” and therefore is not  
4 encompassed by a police officer’s duties. However, *Huppert* does not stand for  
5 this proposition. The language in *Huppert* regarding “chain of command”  
6 argument is merely a dicta discussion of a Fifth Circuit case. The Court finds  
7 Smith’s reliance on *Huppert* unpersuasive.  
8

9  
10 *Huppert* did analyze two Ninth Circuit cases that addressed whether an  
11 employee’s speech was pursuant to his official duties, or alternatively, private  
12 speech. In *Freitag v. Ayers*, 468 F.3d 528 (9th Cir. 2006),  
13

14  
15 [The court] examined multiple different complaints by Freitag,  
16 a female prison guard, regarding sexual harassment by male  
17 prisoners. [It]held that Freitag's reports of sexual harassment,  
18 complaints to her superiors within the prison system, and  
19 documentation of the prison system's response to her  
20 complaints were all examples of unprotected speech. On the  
21 other hand, with regard to her communication outside the  
22 prison system to her state senator and the appointed inspector  
23 general, [the court found] it clear that [those] communications  
24 [were] protected under the First Amendment.  
25

26 *Huppert*, 574 F.3d at 704-5. In contrast, in *Marable v. Nitchman*, 511 F.3d 924  
27 (9th Cir.2007), the Ninth Circuit found that a complaint by Marable, an engineer  
28 for the Washington State Ferries, alleging high-level corruption and  
mismanagement of funds, was outside a ferry-worker's job duties and therefore  
private, protected speech. *Huppert*, 574 F.3d at 705.

1 Three significant facts support the view that all of Officer Smith's safety  
2 concern speech was that of a public employee regarding his own private concerns:  
3 (1) the timing of Officer Smith's numerous filings occurred shortly after his  
4 conflict with Sgt. Jones (all within fall and early winter of 2007), see *Johnson v.*  
5 *Multnomah County, Or.*, 48 F.3d 420, 425 (9th Cir. 1995); (2) most of Officer  
6 Smith's statements touched on issues relating to Smith's employment as an officer  
7 and were signed by him in his capacity as an officer and marked confidential, see  
8 Ct. Rec. 5702 43-54<sup>1</sup>; and (3) Officer Smith's audience was the Safety Board, a  
9 limited audience comprised of members both inside and outside the Quincy police  
10 department who make recommendations to Chief Gonzales. See *Roe v. City and*  
11 *County of San Francisco*, 109 F.3d 578, 585 (9th Cir. 1997). For these reasons, the  
12 Court concludes that Smith's statements and suggestions were internal  
13 communications made by a public employee. See *Huppert v. City of Pittsburg*,  
14 574 F.3d 696, 704 (9th Cir. 2009) (stating a court is to make a "practical look"  
15 beyond the job descriptions to the duties the employee actually performs).  
16  
17  
18  
19  
20  
21  
22

---

23 <sup>1</sup> An "employee's motivation and the chosen audience are among the many factors  
24 to be considered" by the court. *Id.* Although not dispositive, a limited audience  
25 weighs against his claim of protected speech. *Roe v. City and County of San*  
26 *Francisco*, 109 F.3d 578, 585 (9th Cir. 1997).  
27  
28



1 The Court also is persuaded that Officer Smith's statements made at the  
2 private union meeting about the internal selection process of the next sergeant is  
3 employment related speech by a public employee. See *Johnson v. Multnomah*  
4 *County, Or.*, 48 F.3d 420, 425 (9th Cir. 1995). Similarly, the argument between  
5 Officer Smith and Sgt. Jones about the proper way to complete a use of force  
6 report is employment related speech by a public employee.  
7

8  
9 The Court concludes that in all of the statements at issue in this case that  
10 Smith spoke as an aggrieved public employee rather than as a private citizen about  
11 public concerns. Because the Court concludes that Smith was not speaking as a  
12 private citizen about public concerns, the First Amendment retaliation inquiry  
13 stops. The Court finds that Defendants did not violate Smith's First Amendment  
14 rights based on statements that Smith made while employed by Defendants. See  
15 *Desrochers v. City of San Bernardino*, 572 F.3d 703, 709 (9th Cir. 2009).  
16  
17

#### 18 **e. Actions After Resignation**

19  
20 Officer Smith relies on *Blair v. Bethel School Dist.*, 608 F.3d 540, 543 (9th  
21 Cir. 2010), to argue that Chief Gonzales' decision to limit Officer Smith's access  
22 to the Quincy police department back room after Smith resigned from his  
23 employment also violated Smith's First Amendment rights. However, as  
24 Defendants point out, Smith's argument has a causation flaw. Smith was barred  
25 from the back room of the police station six months after he resigned. No  
26  
27  
28



1 retaliatory action could have occurred because Smith was no longer employed by  
2 the City of Quincy.

3       The plaintiff in *Bethel School Dist.* brought a retaliation suit for exercising  
4 his First Amendment rights, because he was removed from a board *after* criticizing  
5 a superintendent. *Id.* at 543. Defendants argue that a party does not have a viable  
6 First Amendment retaliatory claim for actions that occur after termination. In  
7 addition, at least one court has found that a complaint filed a month after a  
8 plaintiff's termination could not be the basis for a retaliatory action because there  
9 is no causal connection between the protected activity and any adverse action by  
10 the defendants. *See Calhoun v. Liberty Northwest Ins. Corp.*, 789 F.Supp. 1540,  
11 1548 (W.D.Wash. 1992).

12       The Court finds that Chief Gonzales' decision to ban Officer Smith from the  
13 back room over six months after Smith resigned from employment by the City of  
14 Quincy and when Smith already was employed by Grant County is not a sufficient  
15 factual basis on which to prove retaliation for the exercise of First Amendment  
16 rights.

## 17 **2. Deprivation of Property/Liberty Interest**

18       Officer Smith also argues that his §1983 claim is supported by a violation of  
19 his Fourteenth Amendment Due Process rights when Chief Gonzales issued the  
20 memo that banned Officer Smith from the back room of the police station. Officer  
21  
22  
23  
24  
25  
26  
27  
28

1 Smith concedes that an injury to one's reputation is not actionable without a  
2 violation of a federally recognized right. A case cited by Officer Smith, *Cooper v.*  
3 *Dupnik*, 924 F.2d 1520, 1532 (9th Cir. 1991), states that an "injury to reputation is  
4 not a liberty or property interest protected by the due process clause of the  
5 Fourteenth Amendment, and therefore this injury alone does not present an  
6 actionable claim under section 1983."  
7

8  
9 Furthermore, as Defendants argue, a protected liberty interest is violated  
10 only if the violation effectively precludes future work in the individual's chosen  
11 profession. *Merritt v. Mackey*, 827 F.2d 1368, 1373 (9th Cir. 1987). This was not  
12 the case for Officer Smith who was employed at the Grant County Sheriff's Office  
13 a short-time after he left the Quincy police department, and who remained  
14 employed with Grant County even after the memo was posted banning him from  
15 the backroom.  
16  
17

18  
19 Therefore, the Court concludes that Plaintiff Smith suffered no violation of  
20 Constitutional rights by Defendants. As a result, Plaintiff has failed to support a  
21 prima facie case for claims under 42 U.S.C. § 1983.  
22

### 23 **3. Termination in Violation of Public Policy**

24

25 Defendants also have moved for dismissal of Officer Smith's violation of  
26 public policy claim which is based in state law. Officer Smith has alleged  
27 violations of public policy in addition to violations of his First and Fourteenth  
28

1 Amendment claims (Ct. Rec. 54 at 17). As the violation of public policy claim is  
2 based in state law, the Court finds that the determination of that claim is better  
3 suited for a state court.  
4

### 5 **Conclusion**

6 The Court concludes that Officer Smith has failed to provide sufficient  
7 evidence to survive summary judgment on his 42 U.S.C. §1983 claims. The Court  
8 grants Defendants' motion to dismiss Plaintiff's 42 U.S.C. §1983 claims. Without  
9 those federal claims to support 28 U.S.C. § 1331, this Court loses subject matter  
10 jurisdiction and will not assert supplemental jurisdiction over the remaining state  
11 law claims. 28 U.S.C. § 1367(c)(3).  
12  
13  
14

### 15 **Other Pending Motions**

16 Currently, there are other pending motions before this Court including (1)  
17 Defendants' Second Motion to Compel Testimony from Aaron Doyle (Ct. Rec.  
18 106), and (2) Defendants' Motion to Compel Aaron Doyle to Sign Release of  
19 Transcripts (Ct. Rec. 110). Given the Court's decision not to assert supplemental  
20 jurisdiction in this case, and given that the sealed status of Mr. Doyle's California  
21 records are being considered currently by a California court, this Court declines to  
22 rule on the pending Doyle motions. Accordingly,  
23  
24  
25

26 IT IS ORDERED:  
27  
28

- 1 1. Defendants' Motion for Summary Judgment (**Ct. Rec. 24**) is **GRANTED**
- 2 **IN PART AND DENIED IN PART** as outlined above.
- 3
- 4 2. The Court declines to exercise supplemental jurisdiction on the
- 5 remaining state law claims. 28 U.S.C. § 1367(c)(3).
- 6
- 7 3. All other pending motions are **DENIED AS MOOT**.

8 The District Court Executive is directed to file this Order, provide copies to  
9 counsel, and **close this case**.

10  
11  
12 **DATED** this 11th day of February 2011.

13  
14 *s/ Rosanna Malouf Peterson*  
15 ROSANNA MALOUF PETERSON  
16 United States District Court Judge  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28